

1 J. David Franklin, Esq., Bar No. 41659  
2 FRANKLIN & FRANKLIN  
3 402 West Broadway, Suite 1140  
4 San Diego, CA 92101  
5 Tel: (858) 229-4441

6 Anthony A. Ferrigno, Esq., Bar No. 61104  
7 LAW OFFICES OF ANTHONY A. FERRIGNO  
8 1116 Ingleside Avenue  
9 Athens, TN 37303  
10 Tel: (423) 744-4041  
11 Fax: (925) 945-8792

12 Pamela E. Havird, Esq., Bar No. 129410  
13 Attorney at Law  
14 P. O. Box 375  
15 La Jolla, CA 92038  
16 Tel: (619) 888-8090  
17 Fax: (858) 815-7778

18 Attorneys for Plaintiff

19  
20 UNITED STATES DISTRICT COURT  
21 NORTHERN DISTRICT OF CALIFORNIA  
22 SAN FRANCISCO DIVISION

23 MAGGIE CAMPBELL, on behalf of herself  
24 and on behalf of all persons in California  
25 similarly situated,

Case No. 3:13-cv-02632- HSG

26 Plaintiff,

27 v.

28 EBAY, INC., a foreign corporation authorized  
29 to do business and doing business in California,  
30 and PAYPAL, INC., a foreign corporation  
31 authorized to do business and doing business in  
32 California,

33 Defendants.

34  
35 **DECLARATION OF J. DAVID  
36 FRANKLIN IN SUPPORT OF  
37 PLAINTIFF'S MOTION TO DISMISS  
38 WITHOUT PREJUDICE  
39 (FRCP RULE 41(a)(2))**

40 Hearing Date: July 9, 2015

41 Time: 2:00 p.m.

42 Location: Courtroom 15, 18<sup>th</sup> Floor

43 Judge: Hon. Haywood S. Gilliam, Jr.

44  
45 I, J. David Franklin, declare as follows:

46 1. I am one of the attorneys representing the Plaintiff in the above-entitled action. I have  
47 been a continuous member in good standing of the State Bar of California for over 47 years. I have  
48 personal knowledge of the facts set forth herein, except where stated on information and belief, and

where so stated on information and belief, I believe the same to be true.

1        2.        The Plaintiff filed this action in the Santa Clara County Superior Court in California in  
2        October, 2012 as a putative class action. The case was removed by the Defendants to the Northern  
3        District of California in June, 2013. After several motions to dismiss filed by the Defendants, the Fourth  
4        Amended Complaint withheld the legal challenges by the Defendants in August, 2014. After the  
5        Defendants answered the Fourth Amended Complaint, the Court entered a Scheduling Order in October,  
6        2014, which was objected to by Plaintiff's counsel because it provided an inadequate amount of time to  
7        conduct the discovery necessary to support class certification and the discovery necessary in order to  
8        adequately prepare this complex case for trial.

9        3.        The Defendants served a Request for Production of Documents consisting of 8 document  
10      requests on December 23, 2014. Defendants also served on Plaintiff on the same date a set of  
11      interrogatories consisting of 13 questions. Thus, Defendants commenced their discovery in this case on  
12      December 23, 2014. Thirteen days later, Plaintiff served her First Request for Production of Documents  
13      on the Defendants, consisting of 10 document requests. Copies of this written discovery are attached to  
14      the Declaration of Kenneth K. Lee in Support of the Defendants' Motion to Dismiss Plaintiff's Fourth  
15      Amended Complaint With Prejudice as Exhibits A, B and D. Although the Defendants provided  
16      documents to the Plaintiff pursuant to the Rule 26 disclosure requirement, the Defendants did not  
17      provide the documents sought by the Plaintiff in her first document request.

18        4.        At the Case Management Conference on March 19, 2015, Mr. Ferrigno arrived about one  
19      half hour late because of the fact that he had been tied up with a case in Stockton, California that  
20      morning. By the time that he arrived at the federal courthouse, the Case Management Conference had  
21      concluded. In a Joint Case Management Conference Statement, Plaintiff's counsel had requested a larger  
22      amount of time in which to conduct discovery for purposes of class certification and for trial preparation.  
23      At the Case Management Conference on March 19, 2015, the Court merely adopted the Scheduling  
24      Order which had been put in place in October, 2014.

25        5.        When this Court reaffirmed the Scheduling Order on March 19, 2015, it became readily  
26      apparent to Plaintiff's counsel that there was no way that Plaintiff could obtain the discovery necessary  
27      for class certification under the schedule established by the Court. At that point, Plaintiff and her counsel

1 made the decision not to pursue this case as a class action lawsuit, and also made the decision to seek  
2 voluntary dismissal of this case without prejudice in order that the Plaintiff could pursue her state law  
3 claims in the Santa Clara County Superior Court. The reason that the Plaintiff was not made available for  
4 deposition at the end of April, 2015, was because the Plaintiff would be seeking a voluntary dismissal of  
her Fourth Amended Complaint Without Prejudice.

5       6. From the Plaintiff's point of view, the best resolution would be for the Court to remand  
6 this action back to the Santa Clara County Superior Court. If such a remand is not forthcoming, it is the  
7 intention of the Plaintiff to re-file her state law claims in the Santa Clara County Superior Court if this  
8 Court grants Plaintiff's Motion For Voluntary Dismissal Without Prejudice.

9       I declare under penalty of perjury under the laws of the United States and the laws of the State of  
10 California that the foregoing is true and correct.

11       Executed on June 15, 2015, at San Diego, California.

13       s/J. David Franklin

14       J. David Franklin

15       One of the Attorneys for Plaintiff Maggie Campbell